

Mother threatened with arrest at Jahn school for defending rights of disabled seven-year-old son

By George N. Schmidt

Lawyers representing the family of a disabled first grade child will be federal court at noon on Friday, December 8, to argue that they should be allowed to intervene in the Corey H case on behalf of their client.

After a controversial October 4 decision by U.S. District Judge Robert

Gettleman to deny a motion for an injunction barring the Chicago Board of Education from carrying out \$26.5 million in special education cuts, Board executives and attorneys celebrated and told the press they had won a "victory".

Apparently, at the same time, they issued orders to schools that special education services should be further

reduced. The complete motion filed on behalf of the Valenzuela family appears on this page. Attorneys expect that it will be a factor in the December 8 court hearings. Since June, CPS CEO Arne Duncan has carefully crafted his words regarding the special education cuts, stating precisely that "No IEP" will be violated. Students and teachers have

charged that schools are under pressure from Duncan's budget office to change IEPs and end the use of one-on-one aides, even for the most disabled children. The Jahn school case is evidence that those charges have merit and that administrative sophistries are being challenged, even if it means that families risk the loss of jobs defending their children's rights.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COREY H.,
Plaintiffs,
vs.
THE BOARD OF EDUCATION OF
THE CITY OF CHICAGO, ILLINOIS
STATE BOARD OF EDUCATION,
Defendants.

No. 92 C 3409
Judge Gettleman

MOTION TO INTERVENE

NOW COMES ADRIANA VALENZUELA ("Intervenor"), individually, and as next friend of her son, MARCEL V., by and through her attorneys, MONAHAN & COHEN, and pursuant to Federal Rule of Civil Procedure 24(a), states as follows as her Motion to Intervene in the Corey H. class action suit:

I. FACTS

1. Marcel V. was found eligible for special education services by Chicago Public Schools ("CPS") on March 21, 2006 as having developmental delays and a seizure disorder.
2. CPS wrote an Individualized Education Program ("IEP") for Marcel on March 21, 2006 in which Marcel was placed in a full time, regular education kindergarten and was to receive occupational therapy and modifications and accommodations in the regular kindergarten classroom.
3. When the 2006-2007 school year began, there was no aide for Marcel at Jahn School, and Marcel's adult brother or other relatives acted as his aide without pay for approximately two weeks.
4. On September 27, 2006, the assistant principal of Jahn School told Marcel's mother that the CPS office that approves individual aides denied Marcel an aide because Jahn School is "overstaffed."
5. On that same day, CPS personnel told Marcel's mother that CPS wanted to have an IEP meeting in two days, on September 29, 2006, to change Marcel's IEP, but would not explain why changes to the IEP were needed.
6. CPS personnel told Marcel's mother that Marcel would be suspended if she did not sign a statement waiving her right to ten-day notice of the IEP meeting, so Intervenor signed the waiver under duress, and against her will.
7. On September 29, 2006, CPS held an IEP meeting regarding Marcel. Although Intervenor was concerned about giving insufficient notice of absence to her employer, she attended the IEP meeting.
8. On September 29, 2006, without further testing of Marcel, and after Marcel had been in school for less than a month, CPS personnel changed Marcel's eligibility label from developmental disability to emotional disturbance.
9. Also at the September 29, 2006 IEP meeting, CPS personnel changed Marcel's placement from full day regular kindergarten to a half day self-contained special education classroom, over the objection of Marcel's mother.
10. CPS personnel told Marcel's mother that Marcel would be moved to another school, but placed him in a special education classroom at Jahn School until the new school was identified.
11. In violation of state law, CPS personnel insisted that Marcel start taking medication to address his attentional difficulties. See 105 ILCS 5/34-18.23. Although Marcel's physician believed that Marcel needed an aide, rather than medication, Marcel's mother began medication to appease CPS.
12. On Monday, October 2, 2006, Marcel was suspended from the Jahn School special education classroom for four days. Marcel received no educational or related services until October 10, 2006, when he returned to school. Marcel's mother never received any incident report related to the suspension.
13. On Friday, October 13, 2006, CPS personnel called Marcel's mother and

18. Because Marcel's mother has refused to agree to the special education placement, Marcel has no school to attend at this time and remains at home.
19. Marcel's mother has lost her employment because she has no one to care for Marcel during the day and must stay home with him.
20. Without employment, Marcel's mother has lost income necessary to address the basic needs of her family.
21. It appears that because CPS denied Jahn School an aide for Marcel due to overstaffing, Marcel's eligibility, special education placement and school were changed to his educational detriment and to his family's economic detriment.

II. INTERVENTION OF RIGHT

22. The Corey H. Plaintiffs filed a Motion for Preliminary or Permanent Injunction on August 4, 2006 and requested that this Court enjoin the Board of Education for the City of Chicago from implementing cuts in special education paraprofessionals.
23. This Court denied the Corey H. Plaintiffs' Motion for Injunction.
24. Intervenor has a specific interest in this Motion because Chicago Public Schools ("CPS") denied her son an individual aide. Jahn School was denied an aide due to "overstaffing," and consequently CPS changed Marcel's eligibility, special education placement, and entire school. See *Michigan St. AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997) (intervenor need not have interest in every part of litigation; but can intervene on significant, specific issues).
25. Intervenor has a direct, substantial and legally protectable interest in the Corey H. proceedings, and in particular with regard to CPS' cuts in paraprofessionals. Marcel's IEP requires that he have an individual aide.
26. There is a tangible threat to Marcel V.'s right to an individual aide required by his IEP. If CPS is not required to fulfill IEP obligations for paraprofessionals, Marcel may be denied his right to a free appropriate public education.
27. Intervenor's interest in the Corey H. action regarding CPS cuts in paraprofessionals may be impaired by this Court's unfavorable disposition of the Corey H. plaintiffs' Motion for Preliminary or Permanent Injunction. Given this Court's denial of the Motion, CPS may refuse to provide Marcel with an aide in the least restrictive environment.
28. Intervenor's interests may not be adequately represented by the present parties. Intervenor offers necessary elements to the proceedings, and an emergency situation, that the class has not presented to this Court. See, e.g., *Forest Conserv. Council v. U.S. Forest Serv.*, 66 F.3d 1489 (9th Cir. 1995). Intervenor asserts a personal interest that does not belong to the general class. *Id.* at 1499.

NOW THEREFORE, Intervenor respectfully requests that this Court allow her to intervene in the Corey H. class action regarding her interest in the denial of special education paraprofessionals.

Respectfully submitted,

Courtney N. Stillman, One of the Attorney for the Family

VERIFICATION

I, Adriana Valenzuela, verify that the facts stated in this Motion for Preliminary Injunction are true and accurate.

Adriana Valenzuela

CERTIFICATE OF SERVICE

I certify that on November 16, 2006, a true and complete copy of the foregoing Motion to Intervene was provided via facsimile and first class mail, postage prepaid, to the following individuals:

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13. On Friday, October 13, 2006, CPS personnel called Marcel's mother and informed her that Marcel would be transferred to Behr School. Marcel's mother refused this transfer because it is far from her home.

14. When Marcel went to Jahn School the following Monday, on October 16, CPS personnel insisted that Marcel was "trespassing," that he had been dis-enrolled from the school and that CPS would call the police to handcuff Marcel if his family did not pick him up from the school.

15. CPS personnel then told Marcel's mother that Marcel had been transferred to Hamilton School. Marcel's mother visited Hamilton School on October 17, but Hamilton had no information concerning Marcel.

16. On October 18, 2006, Hamilton School told Marcel's mother that Marcel could attend school there until she signed consent to place Marcel in a self-contained special education classroom.

17. Because Marcel's March 21, 2006 IEP requires that Marcel attend regular kindergarten with an individual aide, and his family believes this placement is appropriate, his mother does not agree to a special education placement or to the September 29, 2006 IEP.

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Elissia Simmons

Subscribed and Sworn to before me
this 16th day of November, 2006.

Notary Public

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Dated: November 16, 2006

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